

Message Text

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ORIGIN EB-08

INFO OCT-01 EA-09 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-01 H-02 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-02 AID-05 CIEP-02 SS-15
STR-04 ITC-01 TRSE-00 USIA-15 PRS-01 SP-02 OMB-01
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STR:HLAWRENCE (INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

INFO USMISSION GENEVA

USDEL MTN GENEVA

UNCLAS STATE 038487

E.O. 11652: N/A

TAGS: ETRD, JA

SUBJECT: LITIGATION ON NO INJURY FINDING IN ANTIDUMPING
INVESTIGATION OF PORTABLE ELECTRIC TYPEWRITERS FROM JAPAN

REF: STATE 148195 6/24/75

1. REFTEL REPORTED THAT THE U.S. INTERNATIONAL TRADE
COMMISSION (ITC) FOUND BY A VOTE OF 3 TO 2 THAT THERE
WAS NO INJURY TO A U.S. INDUSTRY BY REASON OF IMPORTS OF
PORTABLE ELECTRIC TYPEWRITERS FROM JAPAN SOLD AT LESS THAN
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FAIR VALUE. SCM CORPORATION DID NOT OBTAIN RELIEF IN
DISTRICT COURT AND APPEALED THAT DECISION. THE COURT OF
APPEALS RULED ON JANUARY 12, 1977, AS FOLLOWS: BEGIN TEXT:

SCM HAS RAISED WHAT ARE FAR FROM FRIVOLOUS DOUBTS CONCERN-
ING ITS ABILITY TO OBTAIN REVIEW IN THE CUSTOMS COURT
PURSUANT TO SECTION 516(C). ON THE OTHER HAND, APPELLEES

(U.S.G.) HAVE URGED UPON US WHAT APPEAR TO BE QUITE POSSIBLE CONSTRUCTIONS OF THE APPLICABLE STATUTES AND LEGISLATIVE HISTORY. UNDER THESE CIRCUMSTANCES, WE BELIEVE THAT THE CUSTOMS COURT ITSELF SHOULD BE GIVEN THE OPPORTUNITY TO UTILIZE ITS OWN EXPERTISE CONCERNING THE APPLICABLE STATUTES, AND TO DETERMINE WHETHER OR NOT IT HAS JURISDICTION TO REVIEW THE COMMISSION'S NEGATIVE INJURY DETERMINATION IN A SECTION 516(C) PROCEEDING.

THE JUDGMENT BELOW IN FAVOR OF APPELLEES IS THEREFORE REVERSED AND THE WITHIN CASE IS REMANDED TO THE DISTRICT COURT. THAT COURT SHALL RETAIN JURISDICTION OVER THIS ACTION UNTIL SCM HAS THE OPPORTUNITY TO PRESS ITS QUESTS FOR RELIEF IN THE CUSTOMS COURT. IF THAT COURT SHOULD DETERMINE THAT IT HAS NO JURISDICTION OR THAT IT DOES NOT HAVE THE AUTHORITY TO GRANT SCM ADEQUATE RELIEF TO CORRECT THE COMMISSION'S NEGATIVE INJURY DETERMINATION IF IT DECIDES THAT THE LATTER CONCLUSION IS IN ERROR, THE DISTRICT COURT SHALL THEN ITSELF PROCEED TO EXERCISE JURISDICTION UNDER 28 U.S.C. 1340 AND TO REACH THE MERITS OF SCM'S CLAIMS. END TEXT.

2. TO ESTABLISH A BASIS FOR THE CUSTOMS COURT REVIEW CALLED FOR IN ABOVE DECISION, IT IS NECESSARY TO PROVIDE A NEGATIVE DETERMINATION BY THE SECRETARY OF THE TREASURY EVEN THOUGH THE ISSUE IS AN INJURY DETERMINATION OF THE ITC. AS A FIRST STEP IN LAYING THIS GROUND WORK, SCM FILED A REQUEST WITH THE CUSTOMS SERVICE THAT DUMPING DUTIES BE ASSESSED ON PORTABLE ELECTRIC TYPEWRITERS FROM UNCLASSIFIED

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JAPAN. NOTICE OF THE REQUEST WAS PUBLISHED IN THE FEBRUARY 9 FEDERAL REGISTER. THE NOTICE PROVIDED THAT WRITTEN COMMENTS WERE DUE BY FEBRUARY 16; A LETTER REJECTING THE PETITION WILL BE SENT SHORTLY.

3. AS A FURTHER STEP IN LAYING THE BASIS FOR A CUSTOMS COURT CASE, SCM WILL NOTIFY THE SECRETARY OF THE TREASURY OF ITS INTENTION TO CONTEST THE REJECTION OF ITS PETITION. ONCE NOTICE OF THE INTENT TO CONTEST HAS BEEN PUBLISHED IN THE FEDERAL REGISTER, SCM WILL BE ABLE TO FILE AN ACTION IN CUSTOMS COURT.

4. FYI. IN VIEW OF BRIEF PERIOD FOR COMMENTS AND THE COMPLEXITY OF THE PROCEDURE, TREASURY HAS DISCUSSED THE CASE WITH MR. YOKOYAMA OF THE JAPANESE EMBASSY. END FYI.

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